

**LICENSE AGREEMENT FOR MODIFICATION OF DITCH EASEMENT
(Recreational Trail, Interpretive Signage, and Pedestrian Bridge)
BOULDER AND WELD COUNTY DITCH**

This License Agreement for Modification of Ditch Easement ("Agreement") is entered into this 30th day of April, 2009 by and between the Boulder and Weld County Ditch Company, a Colorado Mutual Ditch Company ("Company"), and Town of Frederick, a Colorado Municipal Corporation ("Licensee"). The Company and Licensee are jointly referred to herein as the "Parties."

RECITALS.

WHEREAS, Company presently operates the Boulder and Weld County Ditch (the "Ditch"), an open surface ditch, running through Licensee's municipal boundaries; and

WHEREAS, Licensee has proposed to construct improvements consisting of a crusher fine recreational trail, a pedestrian bridge, interpretive signs, pedestrian benches, and a wildlife blind (collectively the "trail improvements") within or adjacent to an easement owned by Company for operation of the Ditch; and

WHEREAS, a legal description and map of the subject portion of the Ditch and the appurtenant operation and maintenance easement are attached hereto as EXHIBITS A and B respectively (collectively the "Easement"); and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions under which Licensee shall construct and maintain the trail improvements.

NOW THEREFORE, the Parties set forth and agree as follows:

1. TERMS AND CONDITIONS.

1.1. **LICENSE.** In recognition of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, Company grants to Licensee a non-exclusive right to use and improve the trail within the Easement, as described on Exhibits A and B, subject to the following conditions.

1.1.1. Within the Easement, Licensee shall be permitted to upgrade and construct at Licensee's expense a crusher fine recreational trail in substantially the same location as the maintenance access trail currently existing on the property (the "Trail"), a pedestrian bridge, up to five (5) interpretive signs, up to four (4) pedestrian benches, and a wildlife blind. Said improvements shall not affect the ability of Company to move equipment along the top of the ditch.

1.1.2. Licensee shall provide Company with copies of the plan and specifications for the trail improvements prior to installation, for their review and approval. Review of construction documents and consent

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thereto of plans and specifications for the trail improvements shall be solely for Company's benefit and shall create no benefit or right in any third party.

1.1.3. By reviewing and approving plans and specifications, Company does not warrant the construction plans and specifications, or verify that the trail improvements will operate in accordance with any required performance standards or comply with any applicable laws or safety standards.

1.1.4. Company shall not be liable as a result of any defects in the plans and specifications. Licensee and its consultants, by preparing any such documents, shall be solely responsible for the accuracy, completeness and all other aspects of the plans and specifications.

1.2. **COMPANY USE OF TRAIL.** Company reserves the right for continued use of 25' on either side of the center line of the Ditch for its operations and maintenance of its facilities. Company does not make any claim to any of the trail improvements.

1.3. **DITCH MAINTENANCE.** Company shall have right to maintain the Ditch, though, Licensee may elect at its costs to organize basic ditch cleaning maintenance (anticipated once every five years) in order to minimize damage to trail improvements and wetlands. Licensee shall have no obligation to provide or pay for additional maintenance (unless said maintenance is due in part to Licensee activities thereon), included but not limited to erosion control and ditch-breach remediation.

1.3.1. In exchange for Licensee's performance of basic ditch cleaning, Company shall grant Licensee an additional common maintenance access easement along the northern edge of the property described in Exhibits A and B.

1.3.2. All maintenance provided by Company on the property shall be coordinated with Licensee to minimize damage to the trail improvements and wetlands.

1.3.3. When regular ditch cleaning maintenance is to be conducted by the Company, Licensee will provide two or more dump trucks for collection of spoils to minimize wait time between trucks when cleaning the ditch

2. **PERMITS AND LICENSES.** It shall be Licensee's obligation to determine the need for and to obtain any local, state or federal permits or approvals associated with the trail improvements. It shall be Licensee's obligation to comply with all applicable local, state and federal laws and regulations associated with the trail improvements.

3. **LIABILITY AND INDEMNIFICATION.**



- 3.1. By virtue of entering into this Agreement, Company: a) assumes no liability for Licensee's construction and maintenance activities as set forth herein; and b) assumes no additional responsibilities or obligations related to future or additional activities on the Easement that are allowed or required by this Agreement or by allowing public access to or around said ditch and right away, except for damages or injury caused by negligent acts of the Company or its agents.
- 3.2. To the extent permitted by law, Licensee agrees to indemnify and to hold harmless Company (including its officers, directors, employees and agents) and its successors and assigns for any claims, demands, awards, judgments of any kind or nature, defense costs including reasonable attorneys' fees for damage or for injury to persons or property arising from or caused directly or indirectly by: a) Licensee's construction, maintenance, repair and replacement of the trail improvements; b) Licensee's occupancy and use of the 25 feet from the centerline of the Boulder Weld Irrigation Ditch located within the area described in EXHIBIT A. Nothing herein shall be interpreted as a waiver of Licensee's governmental immunity under the Colorado Governmental Immunity Act (§ 24-1-101 *et seq.*, C.R.S.)

4. **NOTICES.** Any notice required or permitted by this Agreement shall be in writing.

- 4.1. Notice shall be deemed to have been received for all purposes three (3) days after being sent by certified or registered mail, postage and fees prepaid, addressed to the party at the address listed below; when delivered via overnight courier to the address below; or when hand-delivered to the party at the address listed below.
- 4.2. Any successor to any of the Parties should give notice of their succession and provide notice addresses by notifying the other Parties utilizing the procedures set forth herein.
- 4.3. This agreement is being signed in duplicate by the President of the Boulder and Weld County Ditch and sent via certified mail. However, it will only become valid upon the Company receiving in return, by certified mail, return receipt requested, no later than ~~April 28, 2009~~, one of the originals signed and executed by the Licensee. *May 30 2009* *[Signature]*

[Signature]

COMPANY:

Att: President
BOULDER & WELD COUNTY DITCH
COMPANY
PO BOX 1826
LONGMONT, CO
80502-1826

COPY TO:

Jon P. File
P.O Box 983
Broomfield, CO 80038

LICENSEE:

Town of Frederick
c/o Planning Department
401 Locust Street
P.O. Box 435
Frederick, CO 80530
FAX 303-833-3817

COPY TO:

Town Attorney
c/o Cyril R. Videgar
Samson, Pipis, and Marsh, LLC
255 Weaver Park Road Suite 200
Longmont, CO 80501

5. **RECORDATION AND BINDING EFFECT.** This Agreement shall be recorded in Weld County, Colorado at the cost of Licensee. The obligations and benefits of this Agreement shall specifically run with the Property. This Agreement shall inure to the benefit of, and be binding upon, the Parties, and their respective legal representatives, successors, and assigns.

6. **EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.

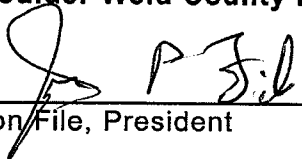
7. **MODIFICATIONS.** This Agreement shall not be modified or amended except by a written instrument executed by the Parties.

8. **FACSIMILES AND COUNTERPARTS.** This Agreement and all future amendments, if any, may be executed by facsimiled signatures. All facsimiled signatures shall be considered the original signatures for all purposes. This Agreement and all future amendments, if any, may be executed in counterparts. All counterparts, when taken together, shall be deemed as an original.

9. **APPLICABLE LAW AND VENUE.** This Agreement shall be interpreted pursuant to the laws of the State of Colorado, without consideration of conflict of law provisions, with exclusive jurisdiction for filing any legal action arising under this Agreement being in the District Court for the County of Weld, State of Colorado.

COMPANY:

Boulder Weld County Ditch Company


Jon P. File, President

LICENSEE:

Town of Frederick

Eric E. Doering, Mayor

EXHIBIT A

Legal Description of Real Property Subject to License Agreement for Modification of Ditch Easement

Parcel 1: Lot B of Recorded Exemption No 1313-32-4-RE-4197, recorded February 14, 2006 at Reception No. 3362978, being a part of the South 1/2 of the Southeast Quarter of Section 32, Township 2 North, Range 68 West of the 6th P.M., and a part of the North Half of the Northeast Quarter of Section 5, Township 1 North, Range 68 West of the 6th P.M. and a portion of Weld County Road 5 lying within Sections 32 and 33, Township 2 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, more particularly described as follows:
Beginning at the southwest corner of said Lot B. Thence along the boundary of said Lot B the following 14 courses;
N00°00'52"W a distance of 244.25'; thence N04°33'10"E a distance of 421.76';
N56°12'25"W a distance of 32.81'; thence N58°11'32"W a distance of 105.98'; thence
N51°17'35"W a distance of 130.63'; thence N48°37'02"W a distance of 97.50'; thence
N34°31'56"W a distance of 108.65'; thence N19°54'01"W a distance of 59.68'; thence
N13°38'37"W a distance of 63.15'; thence N10°14'23"W a distance of 295.87'; thence
S89°30'50"E a distance of 1617.72'; thence S23°30'00"E a distance of 121.20'; thence
S40°01'00"E a distance of 47.92'; thence N89°51'00"E a distance of 157.45' to a point
on the west right-of-way of Weld County Road No. 5; thence along said west
right-of-way of Weld County Road No. 5 the following 2 courses; N00°09'00"W a
distance of 4150.23'; thence N00°28'57"E a distance of 1905.31' to a point on the
boundary of Yardley Wetlands Annexation No. 3; thence along said south line of Yardley
Wetlands Annexation No. 3 the following 2 courses;
S00°17'02"E a distance of 3840.14'; thence N00°44'18"E a distance of 1934.85' to a
point on the east right-of-way of Weld County Road No. 5; thence S00°09'00"E along
the east right-of-way of Weld County Road No. 5 a distance of 5315.06' to a point
on the north right-of-way of State Highway 52; thence along the north right-of-way
of State Highway 52 the following 3 courses;
N89°47'55"W a distance of 30.00'; thence S00°09'00"E a distance of 31.50'; thence
N89°35'00"W a distance of 30.00' to a point on the west right-of-way of Weld County
Road No. 5; thence N00°09'00"W, along said west right-of-way of Weld County Road
No. 5 a distance of 795.13' to a point on the boundary of said Lot B; thence along
said boundary of Lot B the following 3 courses;
N87°52'56"W a distance of 254.20'; thence S00°39'42"W a distance of 878.88' to a
point on the north right-of-way of State Highway 52; thence N87°49'00"W along said
north right-of-way of State Highway 52 a distance of 1126.81' to the Point of
Beginning.

Figure 1



FILE NUMBER	APPROVAL	DATE	BY
TOWN OF FREDERICK, COLORADO			
DEDICATION OF FREEDOM VILLAGE			
CITY MAP			
<p>CIVIL RESOURCES, LLC</p> <p>445 WEST 10TH AVENUE, SUITE 300 DENVER, COLORADO 80202 TEL: 303.733.1234 FAX: 303.733.1235</p>			
DESIGNED BY	DATE	APPROVED	BY
CIVIL RESOURCES, LLC	08/11/04	08/11/04	08/11/04
DRAWN BY	DATE	APPROVED	BY
CIVIL RESOURCES, LLC	08/11/04	08/11/04	08/11/04

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NOTES FROM RECORDED EXEMPTION NO. 1818-82-4 RE-4187.